IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5675 OF 2006

Maruti Vitthal Gopale ...Petitioner

V/s.

The State of Maharashtra & Anr. ...Respondents

Shri S.P. Kanuga instructed by Shri H.P. Vyas for the Petitioner.
Ms. Mohini Thakur, Assistant Government Pleader, for Respondent Nos.1 and 2.

CORAM : H.S. BEDI, C.J., &
V.M. KANADE, J.

DATED : OCTOBER 12, 2006.

P.C. :-

1. The petitioner is the owner of a lodging house known as "Neelam Guest House" situated at Borgaonkarwadi Shopping Centre, Second Floor, Kalyan, District Thane. The lodging house was being run with the requisite licence from the authorities. On 13th October, 2005, the petitioner was issued a Notice under Section 162 (2) of the Bombay Police Act to show cause as to why his licence should not be cancelled as a case had been registered vide C.R.No.161 of 2005

under Sections 363, 366(b), 376, 342 and 34 of the Indian Penal Code and under Sections 4, 5 and 7 of the Immoral Traffic (Prevention) Act 1956 against his employees for confining two minor girls for the purpose of using them for prostitution. The petitioner filed his reply pursuant to the notice, but the competent authority by its order dated 25th April, 2006, Exhibit “B” to the petition, cancelled the licence. The petitioner thereafter preferred an appeal against the said order before the Hon'ble Home Minister, who rejected the same vide order dated 12th July, 2006, Exhibit “C” leading to this petition. A reply has been filed by the respondents and it has been pointed out that the lodging licence had been cancelled as the hotel premises were being used for the purpose of prostitution and a case under several penal provisions had been registered against the manager and two other employees working in the premises, and though the petitioner himself was not an accused, but he too must share the blame for their misconduct. It has accordingly been pleaded that no order should be passed in these proceedings and the result of the criminal case be awaited.

2. The learned Advocate for the petitioner has, however,

argued that in the light of the judgment of this Court in Writ Petition No.7271 of 1999 (Dilip J. Bhatia V/s. The Commissioner of Police, Thane), dated 20th July, 2000, no order cancelling the petitioner's licence could be passed, until and unless a conviction had been recorded. It has also been argued that the petitioner was admittedly not involved in any criminal matter and action, if at all, was warranted against the manager and waiters alone.

3. The learned Assistant Government Pleader for the respondent, however, pointed out that as two minor girls had been abused, the licence of the lodging house had been rightly cancelled.

4. We have heard the learned Advocates for both the parties and gone through the judgment in the cited case. The relevant portion reads as under:-

> "This Court has held that pendency of prosecution cannot be a ground for refusing to renew a licence to carry on the said business. Principle underlying the said decision is that even if a criminal case is pending, that by itself cannot be a ground so long as

> the licence holder himself or his agent or servant is convicted of the said offence. Our criminal jurisprudence recognises that until a person is tried and held guilty, he should be treated as innocent. Other decisions have also dealt with the same subject matter, which have been included in the writ petition compilation. I do not think that it is necessary for me to refer to each of the said decision as the consistent view of this Court has been that pendency of the criminal proceedings cannot be a ground for cancellation of licence. Accordingly, petition should succeed on this issue."

5. We find that the above quoted observations apply to the facts of the present case. We have, therefore, no option but to set aside the impugned orders and allow the petition. We make it clear that if the prosecution results in a conviction, it would be open to the respondents to reconsider the matter in the light of the findings of the Criminal Court.

6. Rule is made absolute in terms of prayer clause (a).

CHIEF JUSTICE

V.M. KANADE, J.